

**BOARD OF APPEALS CASE NO. 5113**

\*

**BEFORE THE**

**APPLICANTS: Gentry's Tree Service**

\*

**ZONING HEARING EXAMINER**

**REQUEST: Special Exceptions to operate a  
construction service and suppliers use and  
commercial vehicles and equipment storage;  
1651 Poole Road, Darlington**

\*

**OF HARFORD COUNTY**

\*

**Hearing Advertised**

\*

**Aegis: 12/20/00 & 12/27/00**

**HEARING DATE: January 24, 2001**

\*

**Record: 12/22/00 & 12/29/00**

\* \* \* \* \*

## **ZONING HEARING EXAMINER'S DECISION**

The Applicant, Gentry's Tree Service, Inc., is requesting a Special Exception, pursuant to Section 267-53H(1) of the Harford County Code, to operate a construction services and suppliers use, and a Special Exception, pursuant to Section 267-53D(1), to store commercial vehicles and equipment in an AG/Agricultural District.

The subject parcel is located at 1651 Poole Road, Darlington, Maryland 21034 on the west side of Poole Road just south of Conowingo Road. The parcel is more particularly identified on Tax Map 27, Grid 1E, Parcel 407 and 55. The parcels consist of 4.408 acres and 0.68 acres, are zoned AG/Agricultural and are within the Fifth Election District.

Appearing for the Applicant was Mr. Kyle Gentry who stated that he is retired from the business but that his wife still operates the tree service. The business is tree trimming and removal and operates Monday through Friday from 7:00 a.m. until 4:30 p.m. Hours do not vary much but some Saturdays and Sundays are worked when emergencies demand. Mr. Kyle and his wife live on the property and the business has operated there for 25 years. Located on the property is an office trailer where chain saws and other small equipment is stored. There is a small parking area used to park trucks and equipment. Equipment stored outside include a chipper truck, stump grinder, cranes, pick up truck, bucket truck, Prentice Log Loader truck and a front end loader.

**Case No. 5113 – Kyle & Rosa Gentry, Gentry's Tree Service, Inc.**

The witness stated that crews car pool to the site in the morning where they pick up their equipment and then leave for the job sites. They return in the afternoon. The witness stated that if the business cannot continue to operate there they would have difficulty storing and protecting the equipment (vandalism has been a problem) and it would be expensive and inconvenient. The witness did not feel as though his operations had created any adverse impacts for neighbors during the 25 years it had operated there and he could not ever recall getting a complaint about the business in all of those years.

The Department of Planning and Zoning indicated that, "The subject property as well as the surrounding area is zoned AG/Agricultural. The Applicant owns and operates a tree trimming and removal business. This business requires the use of trucks, both large and small, a boom or crane vehicle, trailers and other smaller equipment to operate the business. The Applicant's property sits approximately 800 feet back from Poole Road and cannot be seen from the road. There are no signs advertising the business and no customers come to the property. The parcel that is used for the storage of this equipment is approximately 4.408 acres in size. Except for the area that has been cleared in the front left corner of the property, the balance of the site is densely wooded. Across the front of the cleared area, there is an older mobile home that is used for storage and as an office trailer for the subject business. The Applicant has also constructed in this same area a fence with gate that secures the trucks and screens the use from the adjoining property. The Applicant can meet the buffer yard requirements."

The Department of Planning and Zoning went on to discuss the Limitations, Guides and Standards set forth in Section 267-9I of the Harford County Code and found no adverse impacts related to that section of the Code. The Department of Planning and Zoning recommended approval subject to four (4) conditions. The Applicant agreed that he would meet all 4 conditions proposed.

There was no evidence presented that rebutted the facts set forth by the Applicant's witness or the Department of Planning and Zoning.

**CONCLUSION:**

The Applicant seeks the following relief:

- (1) A Special Exception pursuant to Section 267-53H(1) of the Code to operate a Construction services and suppliers operation in an AG/Agricultural zone, and
- (2) a Special Exception pursuant to Section 267-53D(1) of the Code to store commercial vehicles and equipment in an AG zone.

Section 267-53H(1) provides:

Services.

- (1) Construction services and suppliers. These uses may be granted in the AG and VB Districts, provided that a buffer yard ten feet wide shall be provided around all outside storage and parking areas when adjacent to a residential lot or visible from a public road.

Section 267-53D(1) provides:

Motor vehicle and related services.

- (1) Commercial vehicle and equipment storage and farm vehicle and equipment sales and service. These uses may be granted in the AG District, and commercial vehicle and equipment storage may be granted in the VB District, provided that:
  - (a) The vehicles and equipment are stored entirely within an enclosed building or are fully screened from view of adjacent residential lots and public roads.
  - (b) The sales and service of construction and industrial equipment may be permitted as an accessory use incidental to the sales and service of farm vehicles and equipment.
  - (c) A minimum parcel area of two (2) acres shall be provided.

**Case No. 5113 – Kyle & Rosa Gentry, Gentry’s Tree Service, Inc.**

**Additionally, Sec. 267-51 and 267-52 provide:**

**§ 267-51. Purpose.**

**Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1.**

**§ 267-52. General regulations.**

- A. Special exceptions require the approval of the Board in accordance with Section 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.**
- B. A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.**
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.**
- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.**
- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.**

**Case No. 5113 – Kyle & Rosa Gentry, Gentry’s Tree Service, Inc.**

The standard to be applied in reviewing a request for special exception use was set forth by the Maryland Court of Appeals in Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981) wherein the Court said:

“...The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any facts or circumstances negating the presumption*. The duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. (Citations omitted). These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.” (Emphasis in original).

The Court went on to establish the following guidelines with respect to the nature and degree of adverse effect which would justify denial of the special exception:

“Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. At 15, 432 A.2d at 1327.

**Case No. 5113 – Kyle & Rosa Gentry, Gentry's Tree Service, Inc.**

Based on the testimony of the Applicant's witness and the unrebutted findings of the Department of Planning and Zoning, the Hearing Examiner finds that the Applicant has met its burden of proof. There was no evidence presented that this proposed use would have any impacts materially greater than this use at any other location within the zone. The Applicant has met each of the technical requirements of Sections 267-53H(1) and 267-53D(1).

The Hearing Examiner recommends approval of the subject request subject to the following conditions:

1. The Applicant submit a site plan to be reviewed and approved through the Development Advisory Committee (DAC)
2. The Applicant obtain any and all necessary permits and inspections
3. The approval is for the use of the current business owners only and shall not be transferable to either a new business or a new property owner.
4. Within 90 days of the date this decision becomes final, the Applicant shall combine the two parcels into a single property and record those documents among the land records of Harford County, Maryland.

Date FEBRUARY 12, 2001

William F. Casey  
Zoning Hearing Examiner